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WHILE IT IS NEWS.
ALL THE NEWS

THE HICKORY DEMOCRAT

THE BEST JOB PRINTING OF ALL KINDS AT THIS OFFICE.

VOL. 9

HICKORY, N. C., THURSDAY SEPTEMBER 19, 1907.

Famous Case of Southern's Appeal From \$30,000 Fine Argued

Supreme Court Devoted, Day to Hearing Arguments of Counsel For Southern And State in Noted Case

Contentions of Both Sides—If Railway Loses Appeal Will Be Taken—Court May Not Give Opinion Soon.

Raleigh, N. C., Sept. 17.—The supreme court of North Carolina devoted today to hearing the argument by counsel for the Southern Railroad Co. and for the state in the noted appeal of the Southern Railway Co. from the \$30,000 fine imposed on the company by Judge Long in Wake court, for violation of the 2-1-4 cent passenger rate.

Argument in support of the appeal was made by Col. W. B. Rodman and Jas. H. Poi for the Southern and by Governor Charles B. Aycock, Hon. E. J. Justice and S. G. Ryan for the state, in support of the findings of the trial judge.

The indictment of the Southern Railway Co. and Agent T. E. Green, the conviction of both, the release of Green on the payment of a nominal fine with the understanding that he would sell no more tickets at an unlawful rate and the imposition of the heavy fine of \$30,000 on the Southern for its persistence in the sale of tickets at the excessive rate, are all fresh in the minds of the reading public as are also the subsequent sensational prosecution of the Southern and Atlantic Coast Line, under the direction of Governor Glenn, whereby the Railroad companies were compelled to enter into an agreement whereby the reduced rates would go into effect and the appeals in the state and the United States courts be carried up in due form and as rapidly as possible.

Contentions of the Southern.

Broadly stated the contentions of the Southern in the appeal argued today are that neither the bill of indictment, conviction, nor the judgment imposed in this case, can, under argument today be sustained. In their argument today Messrs. Rodman and Poi took the position that it is not an indictable offense for a railroad company to charge more than the two and a quarter cent rate in North Carolina for the reason that the act really makes the violation by the agent a misdemeanor and for the railroad merely imposes heavy penalties to be sued for by the parties aggrieved. In the briefs filed this contention is elaborated at great length and numerous authorities cited.

Another contention is that the fine imposed is not authorized by the constitution and judgment should have been arrested; further that the fine is excessive and in violation of the constitution of the state and judgment for this reason should be arrested.

The contention is also made that upon the whole evidence the defendant railroad company was entitled to the request for instructions to the jury; that the evidence was insufficient to find either the Southern or Agent Green guilty. There is also the contention that the defendant did not have a fair jury to try the case.

Furthermore the Southern contends in the argument presented that when Judge Long refused to continue the case or allow the defendant time in which to prepare for the defense and force them to trial within 24 hours after finding the bill, the railroad company was thereby denied due process of law and the equal protection of the laws in violation of the Fourteenth amendment of the constitution of the United States.

Then there is the general and final plea of the unconstitutionality of the 2-1-4 cent passenger rate act in that it is a violation of the Fourteenth amendment to the constitution.

In arguing the unreasonableness of the penalties provided in the act counsel submitted the calculation that in contesting the constitutionality of the act a railroad company such as the Southern would make itself and its agents liable in 30 days time to \$453,750,000 fines against the company, the same amount against its agents and in addition 10,000 years in jail.

All this argument was in addition to the plea that the whole matter of the application of the new rate act was already pending in the United States supreme court, to test the constitutionality of the act and an injunction issued by the judge against enforcing the act until the constitutionality was passed upon.

to its operation from the federal courts. It is declared also that an attempt is made to restrain attorney general from the enforcement of criminal act than this injunction from the federal court would be against the state and therefore, inoperative.

There was argument that a constitutional act cannot be suspended and that in the event the rate act was ruled in the highest court to be constitutional then it will have been in effect since July 1 last, and the railroads liable for every violation during this time. This to show the fallacy of the injunction from the federal court, pending the adjudication of constitutionality.

And, finally, the contention was laid down that the assumption of jurisdiction by one court, having concurrent jurisdiction with another, does not cut the jurisdiction of the latter court and there must be a plea showing identity of subject matter and parties before there must be abatement in the latter court.

On review of the whole case counsel for the state insisted that the findings of the lower court ought to be affirmed. It may be a month or longer before the supreme court makes its final ruling. Then, in event the contention of the state is sustained, the Southern will take the case to the United States supreme court on writ of error for final hearing.

Important Case Tried At Dallas Court

Dallas, N. C., Sept. 17.—The criminal term of court came to a close Saturday court being an unusually long term, as the criminal portion of the court usually takes up only 3 or 4 days. The only case of interest was the case of Graham Fair, who was tried for murder. The homicide occurred several years ago and Farrar immediately fled the state. He was captured in White Plains, N. Y., and was brought here for trial and was freed after he had been in jail quite a while.

Hon. Oscar F. Mason and Mr. John G. Carpenter appeared for the defense while Solicitor Clarkson was assisted by Mr. F. F. Griffin. The suit of the Long Shoals Co. against the High Shoals Co. will be the first case to come up on the civil calendar.

First Spike Was Driven

—There will be a regular communication tonight of Charlotte Lodge, No. 392, B. P. O. Elks, in the lodge room over the Southern's up-town ticket office.

Work Begins on The Fayetteville Street And Inter-Urban Railway—Many Spirited Citizens Make Speeches.

Fayetteville, N. C., Sept. 17.—This progressive southern town is enthusiastic and excited over the opening exercises incident to the driving of the first spike and the beginning of the laying of iron on the Fayetteville Street and Inter-Urban Railway. A large crowd is in attendance, a band is playing and spirited addresses are being made by various prominent citizens.

The mayor and city aldermen, the officers and members of the chamber of commerce, the officers and members of the industrial clubs, the clergymen and many ladies are in attendance.

Addresses have been made by Hon. E. J. Hale, Capt. J. D. McNeill, F. R. Rose, secretary chamber of commerce, Messrs. A. H. Slocumb, and others.

This is an important event in the history of this progressive city, which is rapidly forging to the front with other southern cities.

This system is owned by W. D. McNeill, W. E. Kindley, and other business men of this city.

Promptly at 3 p. m. all of the business houses will close in honor of the event.



Charlotte News, Sept. 17th. MISS "FLUFFY RUFFLES" CHARLOTTE.

Fast Express Train Wrecked

Easton, Pa., Sept. 17.—The Lehigh Valley express train, from Buffalo to New York, was wrecked early today near Pattenburg tunnel in New Jersey.

A number of trainmen and passengers were injured, but none of the latter fatally.

The train was running at high speed when the locomotive jumped the track and plunged into the mountain side.

The engineer was injured internally and the baggage master sustained a fractured arm.

The passengers injured were riding in the smoking car.

Stop The Proselyting Evil In Athletics

New York, Sept. 17.—The Metropolitan Association of the Amateur Athletic Union, at its annual meeting at the St. Bartholomew Athletic Club, adopted a resolution seeking to stop the proselyting evil among athletic clubs.

Bartow S. Weeks, presented the resolution which was a recommendation to the national body. It was the first step toward resenting athletic clubs. It stipulates that only college men who had a parental district resident should be eligible to wear the colors of the local club.

J. T. Mahoney, on behalf of the registration committee, went a step further with an amendment to the resolution debarring all college men from representing athletic clubs while they are in college.

Weeks contended that the Mahoney amendment was going too far. He furnished statistics to the effect that only in the East was the drafting of athletes practiced. Weeks said that the proper procedure was observed in the West, where whenever a college man represented a local club he was a bona fide resident of the district.

The Mahoney amendment was finally carried by acclamation. It was stated that schools, colleges, or universities come under the ruling and will go into effect at the opening of the colleges.

Horrible Death Of Four Men In Auto. Smash-Up

Colorado Springs, Colo., Sept. 17.—A powerful racing automobile, occupied by seven prominent Elks and the chauffeur, and built to hold but three, while running at a terrific rate, crashed into a telephone pole and was wrecked.

Four of the occupants were killed outright and the fifth was fatally wounded and the others more or less seriously hurt.

The bodies of the dead were mangled almost beyond recognition.

The men were returning from Manitou. The car with its passengers, crowded into two seats, on hood and on steps, plunged at a terrific clip down hill. The driver lost control of the wheel and the powerful machine swerved from side to side.

Suddenly the front wheel struck some object and the machine was thrown a distance of about 45 feet down the hill.

The car probably would have been whirled down the hill for a still greater distance but for a telephone pole which barred the way.

Rowlands to Be Tried Sept. 30

Raleigh, N. C., Sept. 17.—It is definitely settled that the trial of Dr. and Mrs. D. S. Rowland, on the charge of poisoning Mrs. Rowland's former husband, C. R. Strange, will begin September 30, the second Monday of September Court week.

Dr. and Mrs. Rowland have been quietly in jail all this time. There have been reports that Mrs. Rowland intended to go on the stand and make a sensational statement with a view to gaining her liberty, but it is pointed out that being Dr. Rowland's wife, nothing that she might say could be used in the prosecution of him.

Altogether, the report that the wife intended to make any statement other than continue to insist on the innocence of she and her husband, is very strongly discredited.

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There are three other murder cases pending for trial at the September term of the court, the indication is, however, that at least one or two of them will be continued. One of them, Everett Spence, is out on bond, another, Elvira Powell, an aged negro woman charged with implication in an infanticide, is now a raving maniac and will hardly be tried at all.

Thaw Will Probably Be Tried In December

New York, Sept. 17.—When the criminal branch of the supreme court opens next month and the case of Harry Thaw, charged with the murder of Stanford White, is called, Martin W. Littleton, senior counsel for the defense, will demand an immediate trial for the accused.

District Attorney Jerome, it is understood will oppose an immediate hearing.

It is believed that in the end both sides will agree on a date in December for the trial.

Free From Cell. In New World

New York, Sept. 27.—After having served a 25-year sentence in Sing Sing prison, Michael Hackett, a former New York Policeman, is free, thanks to a parole granted last week by the state board of pardons. Hackett entered the prison in 1882 and during all these years he had not had a glimpse of the outside world, and all of his impressions had been formed from occasional pictures and papers he had been able to obtain. He had never seen a trolley car nor an automobile, and a skyscraper was a marvel. Even the dresses of the women today are novelties and objects of curiosity to him.

"This is a new world for me," he said on reaching the city, five hours after his release. "As a policeman 25 years ago, I thought I knew every nook and corner of the city, but the people are different, the buildings new and so suddenly placed me in the heart of the city I would have been lost as completely as if I had never been heretofore."

Many Members of Crew Of Battle Ship Killed By The Big Explosion

Financial And Commercial Conditions Are Good

New York, Sept. 17.—Two prominent capitalists interviewed here as to the present financial and commercial conditions and possible troubles ahead think alike that there is no cause for uneasiness.

Sir William C. Van Horne, chairman of the board of directors of the Canadian Pacific Railway Company, said: "The time has come when Wall Street can no longer ignore the great prosperity that prevails throughout North America. Business will go ahead, Wall Street notwithstanding."

"Of course, it is easy to predict anything. Tight money might be the result of two things: it might come from lack of credit or because of the active conditions, the great activity in trade. The present tightness is caused by the latter condition, but it is not hurting anybody."

Richard C. Kerens, the St. Louis financier, said: "A year ago the country was at flood tide of its greatest industrial prosperity. Then came a scarcity of labor followed by stringent money conditions and a recession in building and kindred enterprises. But this should not be called a depression."

"It is generally believed in the West that the worst has been passed for this season. An all-important consideration, however, is the crops. A few weeks more of favorable weather and a bumper crop will be assured. The yield of other cereals has been fair. Ample money to move the corn crop seems to be forthcoming. Therefore, it may be concluded that there will be nothing like a panic or even serious depression."

Changes of Officials.

New York, Sept. 17.—It is said here that it will be months at least before Gen. Leonard Wood assumes command of the department of the east in place of Gen. Fred D. Grant, who will then take command of the department of the lakes, with headquarters at Chicago. The change has been expected to take place this year. But it is now understood that the war department has decided to keep Gen. Wood in the Philippines until after Secretary Taft's visit to the islands.

When Gen. Wood leaves Manila it is the intention of the war department to grant him an extended leave of absence which will begin on his arrival in the United States, probably late next January.

Gen. Grant's transfer to Chicago has there been postponed.

Mr. T. J. Davis Resigns Office

His Resignation Now in The Hands of Mayor S. S. McNinch—Pressure of Business Given as The Reason.

Mr. T. J. Davis, alderman from ward one, and chairman of the finance committee of the aldermanic board, has decided to sever his connection with the city's government and yesterday afternoon presented his written resignation to Mayor S. S. McNinch. Mr. Davis, it is understood, did not give any reason for resigning, though it is said that his aldermanic duties, and those resulting from his being head of the finance committee, seriously interfered with his business affairs.

Mr. Davis is president of the Elba Manufacturing Company and the People's Ice and Fuel Company.

Being in the hands of the mayor, it is not known at present what disposition will be made of the resignation, though it is believed that it will be presented in an official way to the board of aldermen at its next meeting or at a called meeting. Should it be accepted the board will elect his successor and also his successor as chairman of the finance committee.

Five Officers And 22 Men Killed And Number Badly Injured In Disaster Aboard Battle Ship Kashima.

Cause of The Explosion is Being Investigated—Disaster Occurred After Target Practice—Gas Set Off Powder.

Tokio, Sept. 17.—Forty of the crew were killed and injured on board the Japanese battleship Kashima by the explosion of a 12-inch shell within the shield after target practice on September 9th.

The casualties reported as a result of the explosion are as follows: Killed, five officers (names not given) and 22 men.

Slightly wounded, two officers and six men.

The cause of the explosion is under investigation. It occurred inside of the shield of the star board.

It was not the shell which exploded, but the powder which evidently caught fire from gas emitted from the breech which opened for the purpose of reloading the gun.

The hull of the Kashima was not damaged.

Suit To Dissolve Standard Oil Co

New York, Sept. 17.—It is learned that when the taking of testimony begins here today before Ex-Judge Ferris, the special examiner in the government's suit to dissolve the Standard Oil Company, Frank B. Kellogg, the government's chief counsel, will attempt at once to prove the ownership and control of other corporations by the Standard Oil Company of New Jersey, the reputed holding company of the alleged trust. It is further understood that for this purpose he plans to make C. M. Pratt, a director of the Standard Oil Company the first witness. W. L. G. Rockefeller is likely to be the second witness.

Mr. Kellogg says that statements ordered by federal subpoenas will be used to show that a large number of corporations are owned and directed by the Standard Oil company of New Jersey. That other corporations are similarly involved, he will prove by direct testimony, he says.

Not all of the statements called for by the subpoenas have been received, but Mr. Kellogg expects them today. The taking of testimony before Ex-Judge Ferris in this city will take at least two weeks. About 25 witnesses have been subpoenaed, and many more may be called.

Four additional subpoenas have been served on H. B. Felton, traffic manager of the Standard Oil company; W. H. Tilford, treasurer of the company, H. M. Hanbury, a son-in-law of John D. Archbold, one of the individual defendants in the government suit, and George Chesbro.

TO RE-ESTABLISH CONNECTION. Corporation Commission Orders S. A. L. and A. C. L. to Provide Additional Facilities at Maxton. Raleigh, N. C., Sept. 17.—An order was issued by the corporation commission requiring that if necessary the Seaboard Air Line shall on and after October provide additional facilities so that the connection of its passenger trains from Charlotte to Wilmington at Maxton with the Atlantic Coast Line for Red Springs, Fayetteville and other points, will be maintained, in an elaborate statement.

The blame is wholly saddled on the Seaboard because of breaking that connection to maintain connection at Hamlet with the Birmingham train. The Seaboard now promises to re-establish the connection Oct. 1st.

MR. KITCHIN AT WINSTON. Over 500 People Hear Speech of Gubernatorial Candidate. Winston-Salem, N. C., Sept. 17.—Congressman W. W. Kitchin, of the fifth district, and one of the leading candidates for the gubernatorial nomination, spoke in the courthouse here last night to an audience numbering 500 or more. The congressman spoke for an hour and forty-five minutes and during his speech he was interrupted time and again by hearty applause. The Winston Concert Band furnished music.

Pres. Small Appeals For Aid For Strikers. Washington, D. C., Sept. 17.—The appeal of President Small, of the Telegraphers' Union and President Gomper, of the American Federation of Labor, to organized labor throughout the country for financial assistance to the striking telegraphers was issued today from Federation headquarters.